Thiam Electrical Construction Sdn Bhd v Merino-ODD Sdn Bhd

HIGH COURT (KUCHING) — CIVIL SUIT NO 22–73 OF 2005–I
RHODZARIAH BUJANG JC
19 JUNE 2009

Contract — Building contract — Claim for work done — Delay by contractor in performance of contract — Whether entitled to claim for delayed works

Contract — Building contract — Payment under interim certificates — Whether interim certificate taken as proof of satisfaction or approval of work — Whether interim certificate binding and conclusive

Contract — Damages — Assessment — Requirement of clear and uncontroverted evidence of amount of damages claimed — Whether court able to order damages in absence of proof of loss

Contract — Terms — Implied terms — Whether completion date of contract can be implied into a contract — Intention of parties — Business efficacy — Whether time period to be implied must be just and reasonable

The plaintiff in this action claimed for the value of work done in building University Malaysia Sarawak. The plaintiff had carried out the electrical installation works. The defendant was the main contractor for the project and had agreed in writing to pay the plaintiff RM600,000 for the electrical installation works. The works as contracted proceeded and the plaintiff was paid for every progressive claim they made until their 11th claim. The plaintiff submitted three more progressive claims, Nos 12-14, without any more success. So they sued for RM291,654.50 which they claimed was the balance due and owing under the contract. In their defence and counterclaim the defendant alleged that the plaintiff did not complete the works assigned to them which was marred by delays resulting in the defendant taking over part of the work ('split of scope of work') but which, even then the plaintiff failed to complete, prompting them to appoint third parties to complete the works for them. They counterclaimed for the payments that they made to these third parties.

Held, dismissing the plaintiff's claim and the defendant's counterclaim:

(1) It was clear from the relevant clauses in the contract between the parties that the certification by the defendant as to the amount due and payable to the plaintiff was final and binding on both parties. The general principle that an interim certificate is not proof of satisfaction or approval of work must be viewed in the light of the intention of the parties as contained in their contract. In this case that intention was for the interim certificate to be binding and conclusive and it did not lie in the mouth of the parties to say otherwise. Therefore, up to the 11th certificate, the value of the work done by the plaintiff was RM375,329.30 for both the main works and the variation works (see para 12).

(2) The contract did not specify when the plaintiff had to complete the works. Although there was an absence of an express completion date in the contract, this absence was not totally fatal to the defendant because the court can imply into the contract when the works must be done. The time period to be implied must be just and reasonable in the circumstances of the case in order to bring about a business efficacy to the agreement. Obviously there must be a completion date because the construction cannot go on forever and here it could be implied as May 2004 as this was stated in Appendix II in the proposed split of works between the plaintiff and defendant (see para 16).

(3) Since the plaintiff was guilty of delay in the performance of the contract, they had committed breach of their contract with the defendant and were not therefore entitled to their claim (see para19).

(4) Since it was an undisputed fact that the main works originally assigned to the plaintiff had to be split and part of it to be taken over by the defendant, the plaintiff could not logically be allowed to hold on to the contract sum of RM600,000 as the basis from which to calculate its claim for the total value of the main work done by it (see para 20).

(5) The evidence did not show that the sum counterclaimed by the defendant was for the exact amount of work which the plaintiff did not complete under the split and there was probability that the independent contractors were asked to do works over and above what the plaintiff was supposed to do. Therefore, what the defendant paid to them could not in toto form the basis of their counterclaim against the plaintiff. The court was handicapped by the uncertainty of evidence to calculate how much that counterclaim should be (see para 23).

(6) There must be clear and uncontroverted evidence that the amount claimed by both parties or if not that then some other amount must be

shown to be owing for the court to give a judgment in full or for only part of the claims. Both the plaintiff and the defendant had failed to do so (see para 30).

[Bahasa Malaysia summary

Plaintif dalam tindakan ini menuntut untuk nilai kerja yang dilakukan di Universiti Malaysia Sarawak. Plaintif telah menjalankan kerja-kerja pemasangan elektrik. Defendan merupakan kontraktor utama untuk projek tersebut dan telah bersetuju secara bertulis untuk membayar plaintif RM600,000 untuk kerja-kerja pemasangan elektrik. Kerja-kerja seperti yang dikontrakkan diteruskan dan plaintif dibayar untuk setiap tuntutan progresif yang dibuat oleh mereka sehingga tuntutan mereka yang kesebelas. Plaintif mengemukakan tiga lagi tuntutan progresif, No 12–14, tapi tidak berjaya. Oleh itu mereka menyaman untuk RM291,654.50 yang didakwa mereka sebagai baki kena bayar dan terhutang di bawah kontrak tersebut. Dalam pembelaan dan tuntutan balas mereka defendan mengatakan bahawa plaintif tidak menyiapkan kerja-kerja yang diberikan kepada mereka oleh sebab kelewatan menyebabkan defendan mengambil alih kerja tersebut ('split of scope of work') tetapi, plaintif gagal untuk menyiapkannya, menyebabkan mereka melantik pihak ketiga untuk menyiapkan kerja tersebut bagi pihak mereka. Mereka menuntut balas untuk bayaran-bayaran yang dibuat oleh mereka kepada pihak ketiga tersebut.

Diputuskan, menolak tuntutan plaintif dan tuntutan balas defendan:

(1) Jelas daripada klausa-klausa berkaitan dalam kontrak di antara pihak-pihak bahawa perakuan oleh defendan mengenai jumlah kena bayar kepada plaintif adalah muktamad dan mengikat dua-dua pihak. Prinsip umum bahawa sijil interim bukannya bukti kepuasan atau kelulusan kerja perlu dilihat dari segi tujuan pihak sepertimana yang terkandung dalam kontrak mereka. Dalam kes ini tujuannya adalah untuk sijil interim mengikat dan muktamad dan ia tidak bergantung kepada pihak-pihak untuk mengatakan sebaliknya. Oleh itu, sehingga sijil kesebelas, nilai kerja yang dilakukan oleh plaintif ialah RM375,329.30 untuk kedua-dua kerja utama dan kerja-kerja pengubahsuaian lihat perenggan 12).

(2) Kontrak tidak menyatakan bila plaintif perlu menyiapkan kerja-kerja tersebut. Walaupun tidak tersurat tarikh selesai di dalam kontrak, ketiadaannya secara keseluruhannya tidak cacat kepada defendan kerana mahkamah akan merujuk kepada kontrak bila kerja tersebut perlu disiapkan. Tempoh masa yang dibayangkan mestilah adil dan munasabah mengikut keadaan kes untuk melaksanakan keberkesanan

perniagaan kepada perjanjian. Secara jelasnya mesti terdapat tarikh selesai kerana pembinaan tidak dapat dijalankan selama-lamanya dan ia boleh dianggar sebagai Mei 2004 seperti yang dinyatakan dalam Appendiks II seperti yang dicadangkan dalam pembahagian kerja antara plaintif dan defendan (lihat perenggan 16).

(3) Memandangkan plaintif bersalah atas kelewatan dalam melaksanakan kontrak, mereka telah melanggar kontrak mereka dengan defendan dan oleh itu tidak berhak untuk tuntutan mereka (lihat perenggan 19).

(4) Memandangkan fakta tidak disangkal bahawa kerja-kerja utama secara asalnya diberikan kepada plaintif perlu dibahagikan dan sebahagiannya diambil alih oleh defendan, secara logiknya plaintif tidak dibenarkan untuk bergantung kepada jumlah kontrak RM600,000 sebagai asas untuk mengira tuntutannya bagi jumlah nilai kerja utama yang dijalankan olehnya (lihat perenggan 20).

(5) Keterangan tidak menunjukkan bahawa jumlah tuntutan balas oleh defendan ialah untuk jumlah kerja sebenar yang tidak diselesaikan oleh plaintif di bawah pembahagian dan terdapat kemungkinan bahawa kontraktor-kontraktor bebas diminta untuk menjalankan kerja-kerja yang sepatutnya dilakukan oleh plaintif. Oleh itu, apa yang dibayar oleh defendan kepada mereka bukan secara keseluruhan menjadi asas tuntutan balas mereka terhadap plaintif. Mahkamah dicacatkan oleh keterangan tidak jelas untuk mengira jumlah tuntutan balas tersebut (lihat perenggan 23).

(6) Mesti terdapat keterangan yang jelas dan tidak dipertikaikan bahawa jumlah tersebut dituntut oleh kedua-dua pihak atau sekiranya tiada maka jumlah kena bayar yang lain perlu ditunjukkan agar mahkamah dapat memutuskan untuk memberi penghakiman penuh atau sebahagian daripada tuntutan-tuntutan tersebut. Kedua-dua plaintif dan defendan gagal berbuat demikian (lihat perenggan 30).]

Notes

For cases on assessment, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3240–3245.

For cases on claim for work done, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2790–2800.

For cases on implied terms, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 5305–5355.

For cases on payment under interim certificates, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2879–2881.

Cases referred to

L' Grande Development Sdn Bhd v Bukit Cerakah Development Sdn Bhd [2007] 4 MLJ 518, HC (folld)

Ling Heng Toh Co v Borneo Development Corpn Sdn Bhd [1973] 1 MLJ 23, FC (refd)
Nanyang Development (1966) Sdn Bhd v How Swee Poh [1970] 1 MLJ 145, FC (refd)

Susan Gau (Tan Thiam Teck standing in for her) (Chan & Gan Advocates) for the plaintiff.
Alvin Yong (Chong Brothers Advocates) for the defendant.

Rhodzariah Bujang JC:

[1] The plaintiff's claim filed in this writ action is quite simply for the value of work done in building Sarawak's first university, University Malaysia Sarawak or UNIMAS as it popularly known. The plaintiff's contribution to that historic first for the state was for electrical installation works to it's FE (M & E) Building. The defendant was the main contractor for the project and has agreed in writing to pay the plaintiff RM600,000 for the electrical installation works, a discounted price from RM640,052.50 quoted by the plaintiff.

[2] The works as contracted (as well as the variation works) proceeded and the plaintiff was paid for every progressive claims they made *until* their 11th claim. The plaintiff submitted three more progressive claims, No 12–14, without any more success. So they sued for RM291,654.50 which they claimed was the balance due and owing under the contract.

[3] In their defence and counterclaim the defendant alleged that the plaintiff did not complete the works assigned to them which was marred by delays resulting in the defendant taking over part of the work ('split of scope of work') but which, even then the plaintiff failed to complete, prompting them to appoint two third parties, Borneo Power Development Sdn Bhd and Foong Engineering Co to complete the works for them. They counterclaimed for the payments that they made to these third parties, a sum of RM533,050 and asked that, in the event the plaintiff's claim is allowed, to set it off against their counterclaim.

[4] First and foremost, I must state that although the facts forming the case for each party could be summarised quite easily, unfortunately, the determination of the dispute could be easily had for the simple reason that what the plaintiff had done is now all concealed in the buildings and there were no photographic evidence to show the state they were in at the relevant time of dispute. What I have basically are the progressive payment certificates as my primary guide as to how much work and the value of the work done and from the evidence of the witnesses which works (if any) were not done

which had to be supplemented by the third parties. However, even on the issue of the interim payment certificates, the law submitted by learned counsel for both parties seemed to differ. But first, the issues in dispute.

ISSUES IN DISPUTE

[5] The plaintiff's counsel have defined six issues for my determination in her written submission which I find helpful but I have decided to resolve the parties' dispute along four main issues as follows:

(a) value of works done by the plaintiff;

(b) balance due under the contract;

(c) split of scope of work; and

(d) variation works.

VALUE OF WORKS DONE BY THE PLAINTIFF

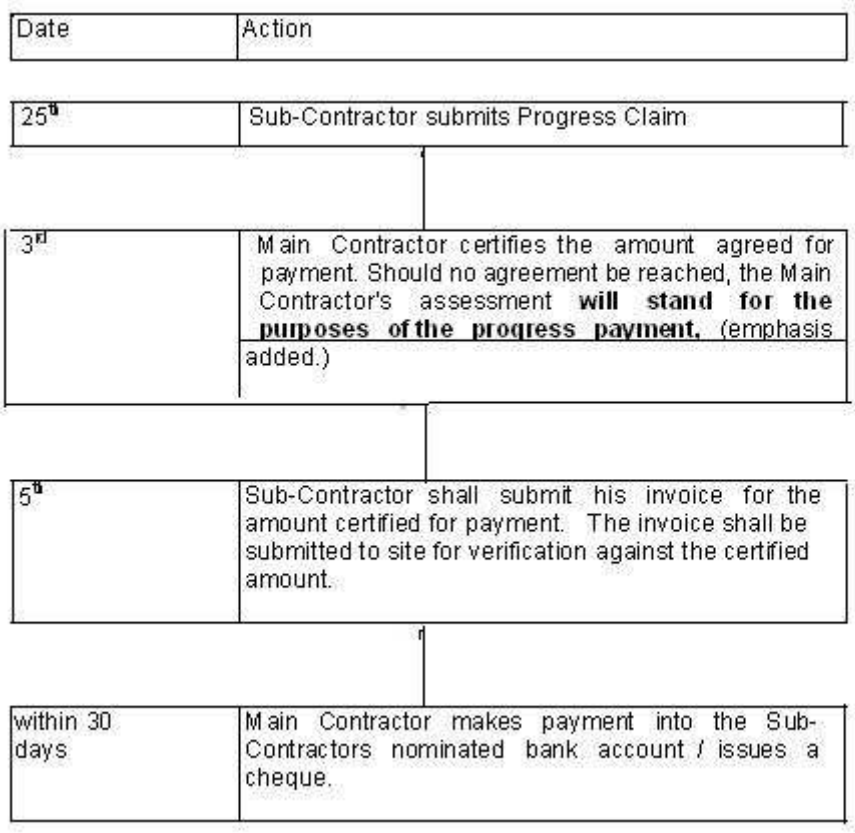
[6] In deciding this issue, it is necessary to look at the contract defining the relationship between the parties and that contract is contained in the letter of offer dated 27 March 2003 which was accepted by the plaintiff on 12 April 2003 (pp 169–171 of exh P2). It is to be noted that Appendix A to the letter of acceptance is the payment flow chart on the conditions of payment, which I think is an essential evidence in this case. It is also to be noted that in this letter of offer 'Works Programme' is stated as 'To be agreed'. In other words, it is not specifically provided for in the letter of offer but under the heading 'Commencement and Completion of the Works' in cl 3 thereof, it is stated that the plaintiff is to complete the works based on the works programme or any revised schedule by the plaintiff.

[7] The letter of offer and its acceptance must be read with the condition of subcontract and appendices (appearing at pp 206–212 of exh P2) wherein cl 18.0, in particular para 18(d) which provides as follows:

> The payment amount that the MC considers to be properly due as an interim payment may differ from the SC's application. In the event of any dispute arising concerning monies due or payable to the SC under this clause, the *certification by the MC shall be final and binding on both parties*. Payment of the SC's interim payment application will be made by the MC at the end of the month. (Emphasis added). Also note that 'MC' refers to the defendant and 'SC' refers to the plaintiff.

[8] Thus, it is clear from the relevant clauses in the contract between the parties that the certification by the defendant as to the amount due and payable to the plaintiff is final and binding on both parties.

I also refer to the payment flow chart attached to the letter of offer as Appendix B in which the parties have agreed as follows:



Date	Action
25th	Sub-Contractor submits Progress Claim
3rd	Main Contractor certifies the amount agreed for payment. Should no agreement be reached, the Main Contractor's assessment **will stand for the purposes of the progress payment.** (emphasis added.)
5th	Sub-Contractor shall submit his invoice for the amount certified for payment. The invoice shall be submitted to site for verification against the certified amount.
within 30 days	Main Contractor makes payment into the Sub-Contractors nominated bank account / issues a cheque.

[9] I would stress from the above chart that the parties have intended that the amount from the defendant certified for payment should 'stand for the purposes of the progress payment'.

[10] As stated earlier, there is no dispute that the defendant have made payments to the plaintiff pursuant to 11 progress payment certificates totalling RM375,329.30 which comprised for RM275,633 of the main work contracted for and RM115,674.56 for the variation works. What was not paid was the claims made by the plaintiff in progressive claims Nos 12, 13 and 14. The plaintiff contended that they have done a total of RM44,980.80 worth of works under the main contract and a total of RM226,003 under the variation agreement. Therefore after deducting the payments made in the progressive payment certificates Nos 1–11, the balance owing is *RM291,654.40*.

[11] The defendant's counsel has submitted case authorities for saying that these interim certificates are not conclusive evidence of work done. He quoted passages from *Hudson's Building & Engineering Contracts* by Duncan Wallace QC which I understand to mean that what is stated in the interim certificates are not 'conclusive or binding on the employer as an expression of satisfaction with the quality of the work or materials' and that the total amount due from the employer could be adjusted in the final certificate to be issued, an opinion which was approved by the Federal Court in *Ling Heng Toh Co v Borneo Development Corpn Sdn Bhd* [1973] 1 MLJ 23. The plaintiff's counsel also referred to the same book and highlighted the case of *L' Grande Development Sdn Bhd v Bukit Cerakah Development Sdn Bhd* [2007] 4 MLJ 518 which was also relied upon by the defendant's counsel. Both have used the ratio in that case to further their own case but my reading of *L' Grande*'s case supports the middle view that although interim certificates are subjected to final measurement of the actual work done at the end of the contract, it constitutes a finality on the assessment of the work done by the contractor which the employer is obliged to pay.

[12] In my view, the final resolution on this issue lies in the contract that the parties have entered and in this instant I am fortified by the fact that the statement made by the Federal Court in *Ling Heng Toh*'s case which I quoted earlier was so made because the contract between the parties have expressly provided that the interim certificates would be subject to adjustments upon the issuing of the final certificate. The general principle that an interim certificate is not proof of satisfaction or approval of work (as stated by Duncan Wallace QC in *Hudson's Building & Engineering Contracts*) must be viewed in the light of the intention of the parties as contained in their contract.

[13] In this case that intention is for an interim certificate to be binding and conclusive and it does not lie in the mouth of the parties to say otherwise. I would agree therefore that up to the 11th certificate, the value of the work done by the plaintiff was RM375,329.30 for both the main works and the variation works.

BALANCE DUE UNDER THE CONTRACT

[14] In order to determine this issue it is necessary to consider whether the plaintiff was guilty of laches or delay in the completion of the work which entitled the defendant to subcontract the work to the other two independent contractors.

[15] It is not disputed that the contract does not specify *when* the plaintiff has to complete the works but Mr Fujita, giving evidence for the defendant,

has given evidence that the date was May 2004 and he said the plaintiff knew of this date because it was in the master schedule put up in the meeting room and the plaintiff was reminded of this date in the weekly and monthly meetings.

[16] Although there is an absence of an express completion date in the contract, this absence cannot be totally fatal to the defendant because the court can imply into the contract when the works must be done. The time period to be implied must be just and reasonable in the circumstances of the case in order to bring about a business efficacy to the agreement. Obviously there must be a completion date because the construction cannot go on forever and here it could be implied as May 2004 as this was stated in Appendix II in the proposed split of works between the plaintiff and defendant appearing at p 983 of exh P5 which was accepted by the plaintiff in their letter dated 26 April 2004 (see p 1090 of exh P5).

[17] Mr Chu Guo Jiun who testified for the plaintiff agreed that they were given work programmes by the defendant to follow and they did but said that instruction for what work to do and when it must be done was given on a piece meal basis. When asked to explain what he meant by that he said that the defendant would issue them with site instructions during weekly meeting and they would be told what works need to be completed then and if the site was not available they would give him another site to do. All this is well and good but bearing in mind the completion date implied into the contract and the undisputed fact that the defendant had to take over part of the works assigned to the plaintiff under the split in the scope work in *April 2004*, it is probable that there was a delay in the execution of the work by the plaintiff. The plaintiff said the delay was not their fault. That the defendant who was supposed to supply the materials but did not do so in time. However, it is to be noted that the only material which the defendant had to supply was the bus bar and this does not explain why other works (not related to the bus bar) which were also in the plaintiff's portion under the split in the scope of work was not completed in time as well.

[18] The plaintiff also said the defendant contributed to the delay because the approved site drawings were only given to them in July 2004 but as the defendant's counsel pointed out the plaintiff was able to start work in February 2003 and were paid, vide two payment certificates, by then. The other reason given was the power cuts suffered at the site which Mr Fujita admitted to be common in the construction industry but which did not adversely affect other subcontractors and I agree it should not reasonably affect the plaintiff as well. The plaintiff also complained about being prohibited to enter the work site for two to three days in July 2004 but it is

just for two to three days and could not in my view account for such critical delay that forced the defendant to split the scope of work with them.

[19] Since it is my finding that the plaintiff was guilty of delay in the performance of the contract, they have committed a breach of their contract with the defendant and should not therefore be entitled to their claim. Alternatively, if I were wrong in coming to this conclusion, I move on to consider these issues.

SPLIT OF SCOPE OF WORK

[20] Since it is an undisputed fact that the main works originally assigned to the plaintiff had to be split and part of it to be taken over by the defendant, the plaintiff cannot logically be allowed to hold on to the contract sum of RM600,000 as the basis from which to calculate its claim for the total value of the main work done by it. Logically, the value of the work under the main contract cannot be RM600,000 anymore.

[21] The defendant has contended that the plaintiff has also failed to even complete the lesser work given it after the split and they had to engage other contractors to do work for them. Mr Fujita has specified the uncompleted work as the ones pleaded in para 25 items one, five, six and seven of their counterclaim. This allegation is again probable given that the appointment of these independent contractors were not a figment of the defendant's imagination as not only did these two contractors testified, they had their quotation and payment certificates tendered in court as well (exh D4–exh D8 and exh D41 for Foong Engineering Co and exh D9–exh D40 for Borneo Power Development Sdn Bhd).

[22] I did a comparison of what Borneo Power Development Sdn Bhd's quotation to the defendant (exh D10) and the statement of account from Foong Engineering Co to the defendant with the work assigned to the plaintiff under the split of scope of work and found, particularly for Borneo Power Development Sdn Bhd duplicity in some of the items quoted or charged (in the case of Foong Engineering Co) with that of the plaintiff's. It is again logical that if indeed this work had been completed by the plaintiff, there is no good or rational reason and it does not make much of an economic sense why the defendant would want to engage these two contractors to do what the plaintiff had already done. The answer is obvious that it is probable that the plaintiff had not completed the work which they were supposed to do as allegedly by the defendant.

[23] Saying this however does not mean that I agree with the defendant that they have proven the amount that the counterclaimed because it is also

not clear to me from the evidence adduced *how much* of the plaintiff's work under the split had been taken over by these two contractors. This is because from a comparison of Borneo Power Development Sdn Bhd's quotation, it would appear that most of what is stated to be the plaintiff's work under the split was included in that quotation but yet Borneo Power Development Sdn Bhd was also paid for installation of RC — sub main cable and they were even paid for supply of materials as well; works which were not in the plaintiff's scope of work. What I am trying to say is that I have not been shown, from the evidence available that the sum counterclaimed by the defendant in this case were for the *exact amount of work* which the plaintiff did not complete under the split and there is a probability that these independent contractors were asked to do works over and above what the plaintiff was supposed to do. Therefore, what the defendant paid to them cannot in toto formed the basis of their counterclaim against the plaintiff and I am handicapped by the uncertainty of evidence to calculate how much that counterclaim should be.

[24] I next address the variation works claimed by the plaintiff.

VARIATION WORKS

[25] Firstly, it is not in dispute that the plaintiff had done variation works for the defendant and Mr Chu Guo Jiun said that the details of these works appeared at pp 1231–1233 of exh P5 and the total amount of variation works he claimed was *RM194,599* but which in his para 11 of the statement of claim was stated to be *RM226,003*. This was not the first time that the quantification of his claim has been found to be in error or that he changed his mind on the amount.

[26] The defendant's counsel in his written submission at p 10 para 25 has highlighted another instant when the plaintiff *after* submitting his claim No 14 for *RM420,673.70* (at p 1160 of exh P5) which figure said Mr Chu Guo Jiun was informed to him by his worker who checked the work done at the site and after making a legal demand, then *changed* the claim to *RM291,654.50*. This was after the defendant's counsel by two letters pointed out that the plaintiff's demand was erroneous because he based it on the original contract sum without taking into account the split of scope of work.

[27] This goes to show that the plaintiff himself is not able to conclusively verify the amount of his claim and without hesitation I accept the evidence of Mr Fujita who testified that he had personally checked the variation works claimed by the plaintiff (as opposed to Mr Chu Guo Juin's reliance on a worker who was not even called to testify) and found his claim very much wanting. For the record Mr Fujita pointed out the items where the plaintiff

had inflated the quantity of materials supplied, the percentage of work completed and the unit rate for the material and labour. I do not propose to go into his evidence in detail but it appears at pp 19–20 of exh P5. Suffice for me to say that the thoroughness in which he was able to specify the inflated items was most impressive and convincing to me.

[28] What also led me to believe him on his testimony was that when he earlier went through the final assessment of the plaintiff's work at pp 1205–1230 of exh P5, he was not only able to pin point (in the notes of proceedings at pp 14–19) exactly where the inflation of the quantity, unit rate of material and labour and percentage of work done *with precision* but more importantly, *with honesty*. I say honestly because there were items which the plaintiff has *deflated* in relation to quantity and percentage of work done and Mr Fujita took the trouble to point these out too. Similarly, I do not propose to regurgitate these evidence but as an example I would refer to the notes of proceedings at p 16 in respect of item C(43) (which appeared at p 1224 of exh P5) where Mr Fujita said the plaintiff certified that 0% of work was done but in fact 15% of the work was done and another example is at p 1226 of exh P5 ie item 1(b) where the plaintiff again certified 0% but the defendant certified 100%.

[29] There was some arguments put forth by the plaintiff in their counsel's submission on what should be the unit rate for charges of labour under the variation works, ie whether market rate or as in the schedule of unit rates as per their agreement with the plaintiff. Even if I were to agree with her on this point, it would not affect my earlier finding that the defendant has shown, through Mr Fujita's testimony that their claims for variation works, and infact even the amount outstanding under the main is not reliable.

[30] It must be borne in mind, not just for the plaintiff but the defendant as well (in respect of their counterclaim) 'that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it: for a negative is normally incapable of proof' per Azmi LP in *Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145. In the context of this case there must be clear and uncontroverted evidence that the amount claimed by both parties or if not that then some other amount must be shown to be owing for me to give a judgment in full or for only part of these claims.

[31] In my judgment both the plaintiff and the defendant have failed to do so and I dismissed both their claim and counterclaim, respectively. In view of this decision, I order that each party to bear their own costs.

Plaintiff's claim and defendant's counterclaim dismissed.

Reported by Kanesh Sundrum